

## Comments on March 14, 2013 Zoning Administrator Agenda

Submitted by: Jim Mosher ( [jimmosher@yahoo.com](mailto:jimmosher@yahoo.com) ), 2210 Private Road, Newport Beach 92660 (949-548-6229)

### ***Item B. Minutes of February 28, 2013***

On page 2, line 4 from end: "...Fleming's ~~Stake~~ Steak House ..."

### ***Item C.1. 121 34th Street Condominium Conversion (PA2012-155)***

Handwritten page 9: Facts in Support of Finding F seem to be missing an essential element: Was the safety violation corrected? If not, the Finding says approval cannot be granted.

Handwritten page 10: Fact in Support of Finding I-3 says "*Public improvements are required of the applicant ...*" It is not clear from this part of the Resolution what those improvements would be, and the Finding to be supported seems only to require that existing public improvements not be *damaged*, not that new improvements be *provided*. The requirement to provide public improvements is again mentioned in Fact in Support of Finding D-1.

Handwritten page 14, Section 4.2: Is the action appealable under Title 19 as well as Title 20, and does the same time limit apply?

Handwritten page 16: General comment on conditions: these seem to be largely conditions related to construction, but Section 1.2 of the resolution says the project involves "*an existing duplex that was remodeled to condominium standards in 2011*" and several of the Facts refer to the inspection having been completed. It would seem to me this is now a change in name only, and it is unclear to me why so many conditions related to extensive further construction are required?

- Condition 6: Are there actually broken public improvements to be repaired? Or is this boilerplate?
- Condition 8: Are there actually any overhead utility connections to be undergrounded at this location? Or is this boilerplate?
- Condition 9: Are there actually illegal improvements to be removed?

Handwritten page 17, Condition 12: "*connection*" should read "*connections*"

Handwritten page 35: Does the parcel map adequately describe the location of the two condo ownership boundaries (one on top of the other as I understand it)?

### ***Item C.2. Johnny's Real New York Pizza (PA2013-013)***

Handwritten page 9: It is unclear to me from the materials presented if the reference to "1320 Bison Avenue" in the title and Section 1.1 of the draft resolution adequate to identify the intended tenant space. Does each have a separate address? I suspect "Parcel 1 of Parcel Map 326-48" comprises a larger area.

Handwritten page 11, Finding A.v: The Zoning Code suggests this finding applies only to requests for an *amendment* of an existing alcohol-related permit, which would not seem to be the case here.

Handwritten page 12:

- Fact C.1: "...a mix of restaurants, **and** retail service uses. Johnny's **Real** New York Pizza ..."
- Fact C.2: I'm not sure approving more generous operating hours than those requested to provide flexibility to future tenants is desirable, since we don't know what the characteristics of those future tenants might be.

Handwritten page 15:

- Condition 16: Is there a wish to prohibit signs visible from outside advertising alcohol sales? Is this condition sufficient to accomplish that (i.e., is that already part of the Sign Standards)?

Handwritten page 16:

- Condition 31: "...under the control of the **license licensee**." (?)
- Condition 33: Was this intended to include the Police Department's recommendation of no reduced-price alcohol sales after 9 pm? It is also unclear to me how this condition is supposed to operate in connection with Condition 24 on handwritten page 15. Is a Special Event permit needed for promotions involving alcohol, even if they are within the normal operational characteristics and allowed by conditions?

Regarding the Police Recommendation (Attachment ZA 5):

On handwritten page 45, the Police acknowledge the Planning Division may recommend longer operating hours than those requested by the applicant, but it would not appear from handwritten page 46 that it is the applicant's hours they have evaluated and are commenting on. It is not clear to me they concur with or endorse the Planning Division's recommendation..

### ***Item C.3. Westcliff Court Tea Room (PA2013-004)***

Handwritten page 7, Section 2.1: The phrasing of the reference to "Section 15301 of the California Environmental Quality Act" is garbled. It is a section of the Implementing Guidelines in the California Code of Regulations, not of the CEQA.

Handwritten page 7, Section C.4: "... it is located less than 500 feet **of-a from** residential **district districts** directly to the north and south ..."

Handwritten page 13, Condition 13: I don't believe all the dumpsters in Westcliff Court are in 3-sided gated enclosures. I don't know if the ones for this property are or aren't.

### ***Item C.4. Orange Coast Winery (PA2013-016)***

I do not believe NBMC Chapter 20.38.060 (Nonconforming Parking) is being properly interpreted here or in the recent Sweet Lady Jane decision (please see previous after-the-hearing correspondence). I believe “intensification” requiring new parking is intended to address intensification relative to the actual uses in place at the time the property became nonconforming, and not to intensification relative to any use allowable under that or the current zoning. The proposed use, particularly with two new commercial suites, sounds to me like a intensification relative to the historic use as a photography studio. (cf. “Facts” B.4 and B.5 on handwritten page 10).

I am also unsure if the current hearing is required not only because of the alcohol and parking issues, but also because it involves food sales within 500 feet of residences.

Handwritten page 7, Section 2.1: Please see comment on Section 2.1 of Agenda Item C.3. The same misstatement occurs here.

Handwritten page 9, Section 3.A.iv.1: mentions “*The Wine Gallery*” but does not further explain its operation. Was that inadvertent?

Handwritten page 15

- Condition 27: “...under the control of the **license licensee**.” (?)
- Condition 28: “The **petitioner operator** shall not share ...” (?)

Handwritten page 16

- Condition 31: same comment as for Agenda Item 2 with regard to the need for Special Events for alcohol sales promotions.
- I don’t see a condition implementing the NBPD request for strict adherence to the maximum occupancy limit.